

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:19-cv-00220-FDW**

JAMES DARIN SISK,)
vs.)
Plaintiff,)
vs.) **ORDER**
KEVIN HOLDEN, et al.,)
Defendants.)

)

THIS MATTER is before the Court on Plaintiff's letter [Doc. 9], which the Court construes as a response to the Court's Show Cause Order [Doc. 8].

Pro se Plaintiff James Darin Sisk ("Plaintiff") is a North Carolina prisoner currently incarcerated at Bertie Correctional Institution. On July 8, 2019, Plaintiff filed suit under 42 U.S.C. § 1983 against Defendant Kevin Holden, identified as a Lieutenant in the Transylvania County Sheriff's Department. [Doc. 1]. Plaintiff appears to be claiming that Defendant violated his constitutional right not to be subjected to cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution. Plaintiff alleges that "he was attacked, beaten, assaulted, denied medical healthcare treatments, after being a victim of verbal and physical assaults from Lt. Holden and a host of other Transylvania County Detention Facility staff." [Id. at 2]. Plaintiff also alleges that, "[n]umerous personal vendettas held against Mr. Sisk by Lt. Holden and staff gaveway [sic] to these officials listed as defendants...." [Id.]. Plaintiff, however, names only Defendant Holden as a Defendant in this matter. Plaintiff does not allege when these events occurred. [Doc. 1].

On initial review of Plaintiff's Complaint under 28 U.S.C. § 1915(e)(2), the Court found that Plaintiff's allegations generally support a claim against Defendant Holden for a violation of Plaintiff's right under the Eighth Amendment to be free from cruel and unusual punishment. The Court recognized, however, that Plaintiff has another lawsuit pending against Defendant Holden, also brought under Section 1983, based on the use of excessive force in violation of Plaintiff's Eighth Amendment rights. Namely, on December 20, 2018, Plaintiff filed a Complaint against Defendant Holden. [Civil Case No. 1:18-cv-00366-FDW, Doc. 1]. This Complaint, which was based on a single instance of excessive force by Defendant Holden, survived initial review and is currently pending before this Court.

Because it appeared that the instant lawsuit is duplicative of and/or overlapping with another lawsuit filed with this Court and because Plaintiff's claim in Case No. 1:18-cv-00366-FDW may be amended, as necessary, to include any additional acts of alleged abuse of which Plaintiff complains here, the Court ordered Plaintiff to show cause as to why the instant lawsuit should not be dismissed. [Doc. 8].

Plaintiff filed a letter on January 13, 2020, which the Court construes as a response to the Court's Show Cause Order. In the letter, Plaintiff states:

I, James S. Sisk, have filed a Complaint on a "Lieutenant Holden" previously back on December 20, 2018 in which I stated that I was physically assaulted & my rights were violated afterward. I endured a beating while handcuffed to a bench bolted to the floor. Severe head trauma followed soon after & is still having a negative effect on me to this day. The Department of Prisons or the Bureau of Prisons is yet to be notified.

While in prison I've filed several reports & have gone unheard, overlooked & without representation. There are other cases against him & some docket numbers from the Courts: 1:18-cv-00220-FDW first one hand delivered to the Courts & was never dealt with, went without response. Second case number 1:18-cv-00366-FDW.

Because of the traumatic brain injury & other unresolved matters, I feel that my complaints/reports & such are being overlooked. My lack of representation, illiteracy with legal & civil rights might be reason as well....

[Doc. 15 (grammatical errors in original)]. Plaintiff provides no information or argument regarding why the instant case should not be dismissed. Further, it appears from his letter that the instant case is based on precisely the same facts as Case No. 1:18-cv-00366-FDW and that Plaintiff simply filed the instant suit due to what he perceived as a lack of response to his first suit. The Court, therefore, will dismiss this case as duplicative of Plaintiff's Complaint in Case No. 1:18-cv-00366-FDW.

IT IS, THEREFORE, ORDERED that:

1. Plaintiff's Complaint [Doc. 1] is **DISMISSED** without prejudice as duplicative of Case No. 1:18-cv-00366-FDW, filed by Plaintiff in this Court.
2. The Clerk is instructed to terminate this action.

Signed: January 23, 2020


Frank D. Whitney
Chief United States District Judge